

**THE NATIONAL COMPANY LAW TRIBUNAL**  
**NEW DELHI BENCH-IV**

**Company Petition No. (IB)- 664(ND)/2021**

**Under Section 9 of the Insolvency and Bankruptcy Code, 2016**

**In the matter of:**

MR. NIPUN JAIN  
 (PROPRIETOR OF M.N. JEWELLERS)

APPLICANT/OPERATIONAL CREDITOR

Vs.

GOEL JEWELERY & MART PVT. LTD.

RESPONDENT/CORPORATE DEBTOR

**Judgment delivered on: 13.05.2022**

**CORAM:**

**SHRI DHARMINDER SINGH, MEMBER (J)**

**MS. SUMITA PURKAYASTHA, MEMBER (T)**

**ORDER**

**PER- SHRI DHARMINDER SINGH, MEMBER (JUDICIAL)**

The instant application under Section 9 of the Insolvency and Bankruptcy Code, 2016 (for brevity 'the Code') read with rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 (for brevity 'the Rules') has been filed by Mr. Nipun Jian proprietor of M.N. Jewellers with a prayer to trigger Corporate Insolvency Resolution Process against of Corporate Debtor M/s. Goel Jewellery & Mart Pvt. Ltd. As succinctly put, the facts of the present case are that the corporate debtor had inter alia placed oral purchase orders, to the applicant, seeking the supply of 12 Pc's Diamond of 18.22 Carat and 12 Pc's Solitaire Diamonds of 18.22 Carat.

2. Oral purchase orders were raised by respondents in the year 2019, the applicant supplied the goods and raised the invoice bearing No. 105 dated 06.04.2019 for an amount of Rs. 32,87,799/-. Further the applicant also raised invoice bearing No. 109 dated 08.04.2021 for an amount of Rs. 70,00,000/-. Thereafter, the applicant repeatedly requested the Corporate Debtor, to clear the invoices. However, the corporate debtor failed to make

payments towards the outstanding the invoices. Consequently, the Applicant issued Demand notice dated 02.08.2021, under Section 8 of the Insolvency and Bankruptcy Code, 2016 read with Rule 5 of the Insolvency and Bankruptcy (Application to Adjudicating Authority Rules, 2016) demanding a payment of outstanding dues of Rs. 1,02,87,799/-. The said notice was duly received by the Corporate Debtor on 04.08.2021.

3. However, the corporate Debtor failed to make payment or reply to the said notice. The applicant has filed affidavit under Section 9(3)(c) dated 25.10.2021 stating that no notice of dispute or reply was received from the corporate Debtor. Hence, prayed for acceptance of the present application under section 9 of the Code.

4. The Corporate debtor filed reply denying the contentions raised by the applicant:

a) The default has and occurred and the reason leading to the said default is the business conditions of the corporate debtor which depicted ZERO sale in almost 4 years. Further stated that they are undergoing financial crisis, even the assets of the company are not enough to fulfill the liabilities of the company. Hence stating the same it takes full responsibility of the default that has occurred and is totally intended to take all steps to ensure the investors are paid back.

5. The applicant has placed following documents on record to prove its claim:

- i. Invoices raised by them dated 06.04.2019 and 08.04.2019.
- ii. Copy of Bank Account Statements of the bank where the account of operational creditor is maintained.

6. We have heard Ld. Counsel for the Petitioner and thoroughly perused the case records. There is a clear admission of the corporate debtor in its reply that the default has occurred and it is unable to make payments due to lack of funds. Therefore, it is most appropriate that CIRP must be initiated and the management of the company shall be vested in the hands of a professional agency. The Scheme of the code is to ensure that when a default takes place, in the sense that a debt becomes due and is not paid, the insolvency resolution process begins. Apparently, since there is no

dispute raised by the Corporate Debtor, in fact the corporate debtor has clearly admitted that a default has occurred. This bench is of the view that the prayer of the applicant deserves to be allowed.

7. In view of the foregoing documents, this Tribunal is of the affirm view that there was default on the part of the respondent in pursuance of invoices raised on behalf of the applicant, accordingly, the present application stands admitted in terms of Section 9(5) of the Code and CIRP is hereby ordered to be initiated against the respondent Corporate Debtor, forthwith.
8. The operational creditor has proposed the name of an Interim Resolution Professional, therefore this bench appoints Mr. Mukesh Gupta, as Interim Resolution Professional having registration number IBBI / IPA-001 / IP-P01494/ 2018-19 / 12254 with email – id: [camukeship@rediffmail.com](mailto:camukeship@rediffmail.com), who has also agreed to accept the appointment as the interim resolution professional and has signed a communication in Form 2 in terms of Rule 9(1) of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016. There is a declaration made by him that no disciplinary proceedings are pending against him in Insolvency and Bankruptcy Board of India or elsewhere. In addition, further necessary disclosures have been made by IRP above named as per the requirement of the IBBI Regulations.
9. We direct the applicant to deposit a sum of Rs. 2 lacs with the Interim Resolution Professional, namely Mr. Mukesh Gupta to meet out the expense to perform the functions assigned to him in accordance with regulation 6 of Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Person) Regulations, 2016. The needful shall be done within one week from the date of receipt of this order by the Operational Creditor. The amount however be subject to adjustment by the Committee of Creditors, as accounted for by Interim Resolution Professional, and shall be paid back to the Operational Creditor.
10. As a consequence of the application being admitted in terms of Section 9(5) of IBC, 2016, moratorium as envisaged under the provisions of Section 14(1), shall follow in relation to the corporate debtor, prohibiting as per proviso (a) to (d) of the Code. However, during the pendency of the moratorium period, terms of Section 14(2) to 14(4) of the Code shall come in force.
11. A copy of the order shall be communicated to the applicant, Corporate Debtor and IRP above named, by the Registry. In addition, a copy of the order shall also be forwarded to IBBI for its records. Applicant is also

directed to provide a copy of the complete paper book to the IRP. A copy of this order is also sent to the ROC for updating the Master Data. ROC shall send compliance report to the Registrar, NCLT.

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(SUMITA PURKAYASTHA)

MEMBER (T)

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(DHARMINDER SINGH)

MEMBER (J)